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MEMORANDUM.—BOUNDARY AWARD.

OTTAWA, 3rd April, 1882.

The following letter was addressed to the *Globe* in continuation of a correspondence to which it had already opened its columns. Its refusal to publish it, as contained in its number of 24th ult., escaped my attention till pointed out to me on my arrival here on Saturday night; and I would only remark that after having well abused me for the evidence given by me two years ago—after having published in full Sir Francis Hincks' lecture of May last year, mainly directed against me—after having published my letter of 8th in its issue of 18th February last, and the reply of Sir Francis Hincks, couched in no very dignified language, I think the public will not find it hard to judge of the motive being something else than want of room. In fact, I feel so much flattered by its exclusion, denoting as it does that I have succeeded in leading Sir Francis into a series of admissions that absolutely demolish the award, that I think it desirable to have it printed and circulated before the debate now in progress in Parliament is concluded. It will show by the fact now so thoroughly authenticated by one of the arbitrators that they *made a boundary* where *they could find none*, and were thus as much *ultra vires* of their powers as the award of the arbitrators at Geneva—so often referred to—would have been, had the award on that occasion ceded a slice of British territory instead of a money indemnity, which I think the British people—however formal the award—would have been very much inclined to laugh at.

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THE BOUNDARY AWARD.

FURTHER REPLY TO SIR FRANCIS HINCKS.

To the Editor of the Globe

SIR,—

Another letter from Sir Francis Hincks, under date of the 10th inst., appears in the *Globe* of the 14th. Sir Francis Hincks will kill the award if no one else does. His letter of the 10th is conclusive. It admits and proves all that has been said against the boundary of the award as a boundary having any existence independent of the award. It admits and proves that the arbitrators have made a boundary where he admits and proves that there was none. What Sir Francis says is that "What the arbitrators made up their minds to was as to the south-"western and north-eastern boundary." To avoid any misconstruction of terms, what he means is, that the boundary of that part of Ontario on the east was the due north line from the head of Lake Temiscamingue, terminating on Hudsons Bay at a point which thus formed the north-east angle of the Province; and that the boundary on the south was the international boundary up to the point where it reached the west side of the Lake of the Woods, which thus formed the south-west angle of the Province. He then goes on to say, "They further "made up their minds that there were no data whatever for declaring "any particular place in the north-west as the north-westerly boundary."

Here we have the whole case clearly put: they found no boundary nor any evidence or data whatever that there was or ever had been one on the north or west between these two points—the north-east and the south-west angles of the Province—and so they proceeded *to make one*, and how to make it, as he tells us in his former letter (of 30th ult.,) became then the question. One way entertained was to consider the

immense distance between these two points, nearly sixteen degrees of longitude, as the base of an irregular triangle and *make a boundary* by a direct line between them. Another way entertained was to consider this immense gap as two sides of a square (the other two sides of which were irregular, but had been determined as legal and absolute by them, up to the south-west and north-east angles aforesaid) and *make a boundary* between them by a due west and a due north line until by their intersection they formed the north-west angle of the Province. They finally adopted the latter, in part, and in part a system of river boundaries, but in any case, whether by the base of a triangle or by two sides of a square, *they were making a boundary* where Sir Francis says *there was none*, and for which he declares "there were no data whatever." In support of this he again says at the end of his letter that "there is "no established north-west boundary and no one has ever pretended that "there is," and goes on to show that the arbitrators made one in a way they thought "perfectly fair" on the north and west between the points they considered legally established. Now, as to whether they made a "fair" boundary or not, that is not the question, and, if they had had the power to do so, would have been a mere matter of opinion, but we are here not in the region of opinion, but of fact, and when Sir Francis says that "no one has ever pretended that there is" a boundary on the north and west he is entirely in error. The Quebec Act of 1774, by which Sir Francis pretends that the arbitrators were guided, declared and enacted that there was such a boundary. The Dominion Government "pretended that there is" a boundary, and claimed the height of land to be such a boundary. The arbitrators found, upon intelligible principles, the north-east angle of the Province at the shore of Hudson Bay. But why they should have seized upon a point for the south-west angle which is not a terminal point at all, but is on a continuous description of the international boundary extending far to the west of it; or why, after starting their westerly boundary from that point on a due north course, they should have brought it to a termination where they did, are questions which Sir Francis Hincks has failed to answer.

I need not extend this letter further, as it is only intended to show that the boundary of the award is merely a creation of the arbitrators, as now admitted by Sir Francis Hincks, and rests on no basis of history or fact. No doubt, they intended to do what they thought "perfectly fair," but they got wholly at sea by starting upon a wrong principle, and, having got to a point they erroneously considered to be legally established, they could not make one thing fit with another, and so jumped at a conclusion, such as I have described it, and *ultra vires* of their powers.

The article in the *Globe* of the 18th on my last letter both misquotes and misapplies what I have said. I did not say that the proclamation of 1791 was a factor in the matter of the western boundary. I only

showed that Sir Francis Hincks, at the same time that he argued from it as a factor, declared that the arbitrators had discarded it as such. And in attempting to convict me of inconsistency with my former opinions as to the western boundary, the error is in those who entirely ignore, in all their arguments, the fact that the Canada of 1763 was divided into three parts, viz: "Lower Canada," "Upper Canada," and the "Indian Territories," and it is in ignoring entirely the existence of the latter, notwithstanding that two Imperial Statutes were enacted specially for the Government of these Territories, that the arbitrators and others seem to have got astray. We should have had these territories when the lease of them expired, in 1859, as I urged in 1857; but it must be remembered in connection with Ontario's claim to them that these territories, west of Upper Canada, were put by Imperial Statute under the Government and jurisdiction of Lower Canada.

Of course I expect that the *Globe*, as a party paper and for party objects, will try to give such turn as may suit its views to what I say. I am not now in controversy with the *Globe*, or party papers on either side, but with Sir Francis Hincks, who has abandoned the judicial spirit of an arbitrator to explain away the errors of an award which his own statements now prove to be untenable; and, while subject to the fair criticism of the *Globe*, or other papers, with which I do not now intend to enter upon a political controversy, I only ask that it be directed against what I did, and not against what I did not, say.

THREE RIVERS, 28th February, 1882.

Being absent in Montreal, I deferred the above on learning of a further letter from Sir Francis Hincks, under date of 25th Feby., in the *Globe* of the 28th, professedly in reply to my letter in the *Globe* of the 18th, now before me, in which Sir Francis still further labours most successfully, though no doubt unintentionally, to kill the boundary of the award. Before noticing that point, however, I am under the necessity of adverting to attacks upon myself personally I have not heretofore noticed, but which, so often reiterated by Sir Francis Hincks, and sought to be maintained by misquotation and misapplication of isolated passages, might involve in error such readers as have not had the opportunity of comparing those extracts and assertions with the facts and the context of what I have really written or said.

It is hardly worth while to notice the commencement, where he seeks to retort in the matter of discourtesy by charging that I did not send him a copy of my evidence before the Parliamentary Committee; but the cases are not parallel, for, though differing with the arbitrators, I spoke of them not only with courtesy but with esteem, though not once mentioning their names; whereas Sir Francis Hincks' lecture

was in the main a personal attack upon me. In one paragraph my name appears six times, in another eight times, and in yet another fourteen times, in fact it is fairly bristling with "Wm. McD. Dawson," and was a carefully prepared written document, which Sir Francis must evidently have been cogitating over for more than a year, and, as naturally to be expected, would be more correct in a promised pamphlet than as reported in a daily paper, while my evidence before the Committee was *viva voce*, and published in the Blue Books, over which I have no control, and of which Sir Francis no doubt had as early communication as I had. A gentleman has now, however, been kind enough to send me a copy of the lecture in pamphlet, and, though I may not have as much spare time as Sir Francis has on hand, it will be answered in due course and in time to be useful, he may depend upon it.

Sir Francis says in this last letter that he has charged me with "gross inconsistency" and says he supports it by an extract from my own report made in 1857, as follows :—

"It will be seen by the question of boundary, already treated, that "the country about Red River, Lake Winnipeg, etc., which they (the "Hudson Bay Company) claim under their charter, absolutely belongs to "Canada."

Well, I certainly wrote that in 1857, and I challenge and defy Sir Francis Hincks to show that I have ever since denied it or contradicted the fact therein stated, that the country named belonged to Canada as an integral part of that "CANADA" that was ceded by France in 1763. My whole evidence before the Committee of 1880 distinctly and absolutely maintains the same fact, and I maintain it now. But Sir Francis Hincks has not yet gone so far (and if he did his boundary would be still more wide of the mark) as to say that the old Province of Quebec, out of which Lower and Upper Canada were carved, was identical with the whole of French Canada, ceded by France in 1763. If he would just only attempt to say so instead of implying it, he would soon be impaled on the horns of a worse dilemma than he has yet got into. But why does he accuse me of inconsistency because I said twenty-five years ago, what I say still, that Canada, as ceded by France, covered the Red River, Lake Winnipeg, etc., when I had never denied it and he dare not deny it himself, though he does not pretend to carry Ontario there ! ! ! The fact is that Sir Francis, while he cannot deny, purposely, as I am now constrained to say, ignores the Indian Territories altogether, as if they were wholly foreign to the argument, though they were undoubtedly parts of "Canada" and were, by the Imperial Parliament, shown to exist "adjoining" but not part of Upper or Lower Canada. I pretended twenty-five years ago, precisely as I do to-day, that Canada as acquired from France included the Red River and the Saskatchewan, and was divided first into the small "Province of Quebec" and the "Indian Territories"—then in 1774 the Province of Quebec was enlarged out of, but did not absorb, the Indian Territories, and in 1791

the Province of Quebec was divided into two, when the whole country then consisted of "Lower Canada," "Upper Canada" and the "Indian Territories," the latter (the "Indian Territories") having been twice separately and distinctly legislated for by the Imperial Parliament, as separate from but "adjoining" the Provinces of Lower and Upper Canada, and put under the jurisdiction and government mainly of Lower Canada. All these definitions were taken into account in the document Sir Francis Hincks has quoted, and Canada was treated as the Canada acquired from France, without any minute inquiry into the question of inter-provincial boundaries, which were not at the moment of any importance, and had little or no bearing upon the issues then involved. But Sir Francis thinks it an awful thing to change an opinion, and we shall see in the sequel how this may affect his adherence to a wrong principle and an erroneous award, as in his view a less "shame" than to acknowledge an error. When the award was made, the arbitrators had before them all that the ingenuity and plodding application of a Mills and a Mowat, with unlimited means at their command, with all the resources of a wealthy Province at their back, and as many assistants as they chose to employ ransacking the archives of Europe and America, could adduce; and all this, collected in ponderous tomes of print and large sheets of lithographed maps of all ages from the discovery of America to the present time, within their purview; and yet they erred, egregiously erred, in an award for which in every letter he writes Sir Francis Hincks declares there were no data whatever, and yet maintains that they were right rather than make what he thinks would be "proclaiming his own shame" in the admission that they were wrong. On the other hand, when I wrote the report of 1857, I had no aid and no assistance, no means of acquiring additional information beyond what I had gradually picked up in researches previously carried out at such leisure moments as I could command with but very limited time; and yet Sir Francis thinks that if in that report, with nothing previous in the same line of investigation to guide me, which was the first published enunciation at that period of the rights and interests leading to a great future for the country, and which, at sacrifices that should never have been necessary, are now assured to the people of Canada, some error occurred which the mass of printed information since produced had convinced me of, it would be "proclaiming my own shame" to acknowledge it. That may be Sir Francis Hincks' view of the moral aspect of the case, but it is not mine. It may account for his admission in every letter he writes that there were no data whatever for the boundary of the award on the north and west, and yet that it always was and is the true boundary. That is a contradiction to which Sir Francis Hincks may, with his construction of "gross inconsistency" and "proclaiming his own shame," reconcile himself, but I can only say that such an interpretation is peculiar to himself.

What he expected to make by the quotation from the report of 1857, in which there is no error and which exactly expresses what I then maintained, and have ever since maintained to the very letter, is more than I can imagine, as the use made of it by him only proves that he has not yet begun to master the subject on which he writes. If there has, however, been additional evidence adduced in the documents supplied to change an opinion held by me at that time on any one point, Sir Francis Hincks has not yet been sharp enough to discover it. In the document he has quoted from I was preparing a State paper, which was adopted by a Minister of State for the action of the Government, and in such a document, while very decided in maintaining the rights of "Canada" as one country, I was bound to be very cautious, and I think I was so from the fact that no material point in it has ever been controverted. Less cautious in the expression of merely personal opinions on points that were not in the category of proved facts it would be strange indeed if the mass of evidence since adduced had not thrown some new light thereon, and when that is made to appear I should be far from feeling, like Sir Francis Hincks, that it would be "proclaiming my own shame" to admit it. Such has not occurred, however, in relation to the State paper referred to, for it was and is correct, so far as it goes, and in all it maintains, and when it is shown that I have changed in anything elsewhere expressed, I shall seek, if I can, to justify the change, and not "proclaim my own shame" by resisting the evidence of facts, as Sir Francis Hincks so unblushingly assumes to be the right principle to follow.

"Gross inconsistency," "tergiversation," and "proclaiming his own shame"—these be strong words, Sir Francis, and perhaps it would not be amiss to see how their application could be made in your behalf to the existing state of things as compared with the past, to see, in fact, what resemblance they bear to the chickens that too surely come home to roost. Without time now to treat it generally, I have glanced at the pamphlet containing Sir Francis Hincks' lecture of May last year, and in it, at page 16, I find the position he had previously held in this controversy described in the following words :—

"Up to the time when it became my duty to study the question as "an arbitrator, I had been under the prevailing impression that the "height of land was the boundary of the Hudson Bay Territory."

I take it for granted that Sir Francis has so stated truly the position he formerly held towards this great question, and when he frankly acknowledges the change of opinion avowedly worked in him by my Report of 1857, and the succeeding one by Chief Justice Draper, so far am I from charging it as "proclaiming his own shame" that I view it, on the contrary, as an honourable acknowledgment of previous ignorance and error. But what of that ignorance and error and the responsibility attaching thereto? Sir Francis Hincks had long been

one of the ruling powers of the country. He had risen to the highest position in the gift of the Crown within the vast domain of the old United Province of Canada and its dependencies, and as the first Minister of the Crown was responsible for the administration of the law, civil and criminal, throughout the wide expanse of Canada, not only as considered in relation to the two subdivided and again re-united portions of the old Province of Quebec, known by the names of Lower and Upper Canada, but extending to the whole country from the Gulf of St. Lawrence throughout the whole North-West to the shores of the Pacific, and the embouchure of the Mackenzie River, in the North Sea. It is not that the late United Province of Canada was alone under his sway as its Chief Minister, but that by specific Acts of the Government and Parliament of the Empire, just as binding and imperative as the British North America Act that now binds together this glorious Dominion, these vast regions, constituting that magnificent heritage of the people of Canada we so fully recognize to-day, were placed under his Government, and he now comes forward "proclaiming his own shame," and declares that he did not know it, that he had yet to learn, I might say, the baby-alphabet of the subject, when called upon to adjudicate upon the merits of a divisional line between the integral parts of that vast domain, when he tells us it became his duty to study the question of that divisional line—a question of utter insignificance as compared with the higher duty imposed upon him by the laws of the country, of which he was the sworn administrator, and which he neglected on the pitiful excuse of ignorance, or the "prevailing impression" that it was some other body's country.

True, the neglect of an imperative duty arising from that "prevailing impression" may be a neglect in which others, both before and after, shared, but when Sir Francis erroneously thinks he has detected me in acknowledging that I did not at that time know everything, and is found in almost the same breath "proclaiming his own shame" in avowing that he himself knew nothing, notwithstanding that his duties and responsibilities were such as to make ignorance shameful indeed, it is but fair that I should point out that he was not without some monition and a pretty strong pressure as to what his duties were, and the addition the incident will make to the history of the case may as well be stated now.

When the Government was in Toronto, and after the military expedition that had been sent to quell the Indian insurrection on Lake Superior, which made a favourable opportunity for calling attention to the subject, a project was got up by myself and a gentleman then an officer of the Government for the initiation of an advance of settlement towards the Red River and the North-West, expressly in view of ultimate proceedings for the re-opening of the country as a field for commerce and immigration when the lease to the Hudson Bay Company should expire. Neither of us having at that time the position or

influence to push so important a matter, we solicited the assistance of the late Honourable George Brown, at that time, though he had never been in Parliament, the most influential journalist in the country, and supporter of the Lafontaine-Baldwin Administration, in which Sir Francis Hincks was Minister of Finance. Mr. Brown took the matter into consideration, I lent him some books on the question and he became very warmly engrossed in the project, and the result was a memorial to the Government, signed by Mr. Brown first, as the most influential, by Mr. Alexander McNabb, afterwards of Saugeen, where I hope the old gentleman is still alive and well, and lastly by me, as junior. We then, by appointment, interviewed Ministers Baldwin, Hincks, Price, etc. Brown was chiefly our spokesman, and how ably he advocated the project I need not say—nor need I say how warmly it appeared to be taken up under such auspices. But soon after occurred the quarrel between Mr. Brown and the then Ministry, which had very important results, which are matters of history, and our petition was, of course, pigeon-holed, though no doubt it is still to be found among the archives of the Government. The following year found Sir Francis Hincks Premier, with responsibilities and duties extending not only over Lower and Upper Canada, but to that greater Canada of which they were but small provinces, and which was put as emphatically, by Imperial enactments, under the jurisdiction and control of the Administration of which he was the responsible head, and by the same authority, as that by which they are integral parts of the Dominion to-day; but notwithstanding that the matter was thus brought under his notice as above, we now find Sir Francis Hincks "proclaiming his own shame" by the avowal that he was in utter ignorance of these responsibilities and duties, and quite satisfied with the "prevailing impression" that the major part of the country for which he held Her Majesty's commission as its chief responsible administrator under the Crown was some other body's land, with which he had no concern. Let me tell Sir Francis Hincks that if he had done his duty then, as I sought to do mine in a humbler sphere, we would have had a Canada worth boasting of to-day, for we would have had within the last twenty-five years all that the next twenty-five will bring, and that will be something that all thinking people, even Sir Francis Hincks, must now understand to be a degree of progress that the imagination can scarcely realise in advance.

I shall now return to Sir Francis Hincks' last letter, and convict him at once of misstating the position he seeks to controvert, like putting up a baseless fabric as being of my construction, in order to knock it down. He says that I do not "pretend to affirm that it is possible to lay down any northerly boundary west of the north-easterly boundary on James' Bay." What authority, I would ask, has Sir Francis for that assertion? The Quebec Act certainly declared a boundary, which as certainly the Albany River is not. He continues in the same paragraph, as my proposition, that "the arbitrators, appointed

expressly to determine the boundaries, should have simply reported that the true westerly boundary was at the north-west angle," etc., and anyone reading his letter would conclude that I concurred in that point being correctly designated as "the true westerly boundary," whereas there was not one word ever said or written by me that would bear that construction in the most remote degree. I was dealing with his statement that they could not find a northerly boundary when I said, "Then why, it may be asked, did they not report the fact that there was no boundary, instead of proceeding to make one?"

I must here protest against the misapplication of terms by which Sir Francis obscures his own position and mis-states mine so often. He speaks of the westerly boundary when he means the extreme point on the west to which they decided that the southerly boundary extended. The north-west angle is a point on a line of boundary, and not a boundary itself. It is the limit on the west, according to them, of the southerly boundary, but not a westerly boundary, which he has declared they could not find, any more than a northerly boundary. When they professed to have found the termination of the southerly boundary at the north-west angle of the Lake of the Woods (in which I do not agree with them) they, being of that opinion, had a right to report so; but when from that point Sir Francis declares so repeatedly and emphatically that they could find no boundary on the west or on the north he thoroughly sustains what I assert, viz.: that they made a boundary instead of finding one. He declares that they found a boundary round two sides of the area of the Province; on the other two sides, the west and the north, they found none, and no data whatever therefor, and hence they made one to suit their own views of what they thought fair, which was beyond their powers.

As to the north-west angle of the Lake of the Woods, it has nothing whatever to do with the boundary of Ontario. It is simply a point on the line of the international boundary, and, if the arbitrators were right in carrying the southerly boundary of Ontario to that point, then there was nothing to stop them there, and they were bound to continue on the international line still further west, "450 miles" and more.

It is, however, wholly unnecessary to fill your columns with Sir Francis' criticism of my letter or the remarks which he seeks to make offensive by language not generally used even in the heat of discussion, and if it turns upon himself he has himself to thank. I am very sorry to tread on his exceedingly sensitive corns. A man in the wrong and determined to defend it generally gets in a passion; but the subject, in the common interest, is too important to permit of his going unanswered. My letter will speak for itself, but, while he objects that it does not show where the boundary should be, I have only to say that that is a question to be dealt with outside of the untenable conclusions of the award. Its sole object was to show that the boundary of the

award was not the true boundary of Ontario, and in that he comes again and again to my aid and proves it most conclusively, and for that I need only quote his own language, four times again repeated in his last letter, as follows: (1.) That the boundaries "of Upper Canada "were so vague on the north and north-west that it is simply impossible "to find any line positively laid down by authority." (2) "I have "always admitted that, while the arbitrators determined all the points in "dispute and found true and legal boundaries on the west and north-east, "they had no data to guide them as to the mode of connecting the "points established"—that is, that for two sides of the Province they had no data whatever. (3.) "My object was simply to prove that no "precise boundaries were laid down, and that the arbitrators were com-"pelled to determine them between certain established points in the "manner most advantageous to the contending parties," that is, *to make a boundary* which they thought a good one for two sides of the Province. (4.) "The arbitrators determined, as they thought they had a right to do, "the boundaries on the north and north-west. I have sufficiently "explained the imposibility of finding true boundaries where there are no "data whatever." And so out of his own mouth he is condemned—they "determined" boundaries for one-half or two sides of a [square] of the Province for which they had "no data whatever."

When Sir Francis Hincks can appeal to some authority for that point at which the award terminates the southerly boundary, which he says was legally established at the north-west angle of the Lake of the Woods—some authority that carries it to that point and no farther—there will be some room for argument; until then there is none. It would then be in order to show why the arbitrators adopted a due north line from that point, and why, at a distance of seventy or eighty miles on that course, they should have stopped and turned to the eastward for a northerly boundary, and, as Sir Francis Hincks has declared that "there were no data whatever" for these last two boundaries, it would need something more than his opinion that they were "most advantageous to the contending parties" to make them legal. The Dominion claim before them was for boundaries which, though in my humble opinion erroneous and pleaded on false principles, were quite intelligible. The Ontario claim before them was for boundaries also quite intelligible. The award was for boundaries for which Sir Francis has failed to show any intelligible basis, the terminating point of the southerly boundary, at the north-west angle, being without authority, and the balance without even the pretence of authority, and resting only upon what the arbitrators chose to think would be "most advantageous to the contending parties," which was not a matter for their consideration.

The Ontario claims are pleaded on just so much of the known facts of history as was deemed suitable to maintain it, ignoring adverse facts, of which not the least was that Lower Canada had, by special Imperial enactment, rights of Government and jurisdiction outside of and beyond

Upper Canada on the west, and yet within "Canada". And if Lower Canada has seen fit to give up her claims to a vast domain originally hers—and in which equal rights were for ever secured to her by treaty—for the purpose of a fairly balanced Confederation, in which her interest would be duly regarded under the legitimate protection of her just and proportionate influence in the deliberations of the commonwealth, she has a right to protest against the erection, under the flimsy plea of an award of arbitrators, *ultra vires* of the question committed to their deliberations of a dominant power, calculated to create and foster antagonisms in the future that had better be met and avoided at the outset.

Your obedient servant,

WM. McD. DAWSON.

THREE RIVERS, 8th March, 1882.